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ABSTRACT

This document is the third in a series of studies designed to examine the legal aspects of various potential educational problems in our society. This particular study deals with the case of a young man who, when denied admission to the only institution in the State University of New York that offered his chosen field of study, was forced to obtain admission to a private college in the State. The young man argued that since he was not rejected by the SUNY institution because of lack of qualifications but only lack of space, the State should offer financial aid sufficient to cover the added costs of the private institution. Eighty percent of the attorneys surveyed were of the opinion that the case would come to court within 5 years; 60% saw other public institutions such as hospitals coming under attack; 75% felt that student action for equal protection is invalid; and 60% saw the event as beneficial to society. The possible implications for the future of higher education arising out of this case are the death of private schools and more freedom of choice for the poor. (HS)

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Emerging Education Policy Issues In Law

UNEQUAL STUDENT AID

number three of a series

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by
stuart a. sandow
research fellow

an exploratory report from the
educational policy research center at syracuse
syracuse university research corporation

June 1971

THE EDUCATIONAL POLICY RESEARCH CENTER AT SYRACUSE:

The EPRC was founded in 1967 with funds provided by the U.S. Office of Education on an annual basis. Its purpose is to define and assess alternative policies for education with an emphasis on the future consequences of present policy options. Three major research projects are post-secondary education alternatives, K-12 alternatives, and long-term poiicy planning. The Center was established in cooperation with the School of Education and the Maxwell Graduate School of Citizenship and Public Affairs of Syracuse University, and is administered by the Syracuse University Research Corporation. The Center consists of about twenty researchers, drawn from governmental and educational organizations, and from professors and graduate students at Syracuse University. Its focus on the future of education has required the Center to employ both traditional and new research tools, and to draw upon a wide range of experience and training in practical affairs and academic disciplines. The Center's emphasis on policy research has led to an expanding dialogue between its staff and the authorities and publics of education in order to relate its policy analysis to problems in educational policy formulation and planning.

Documents are available from the Educational Policy Research Center at Syracuse in three formats, besides the regular publication, Notes on the Future of Education:

RESEARCH REPORTS

Reports which have completed review by the EPRC and which deal with specific, policy oriented research. The reports in this series are usually marked by intensive research, either quantified or historical, and address themselves to specific research questions.

EXPLORATORY REPORTS

Reports which, while dealing with policy issues, often approach the realm of conjecture; they address themselves to social issues and the future, may be prescriptive rather than descriptive in tone, and are, by nature, more controversial in their conclusions. The review of these reports by the EPRC is as rigorous as that for Research Reports, though the conclusions remain those of the researcher rather than necessarily representing consensus agreement among the entire Center staff.

WORKING DRAFTS

Working Drafts are papers in progress, and are occasionally made available, in limited supply, to portions of the public to allow critical feedback and review. They have gone through little or no organized review at the Center, and their substance could reflect either of the above two categories of reports.

Emerging Education Policy Issues in Law

UNEQUAL STUDENT AID

(Number Three of a Series)

by

Stuart A. Sandow

with the assistance of

Ray Reisler
Cornell University

June 1971

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THE SUBJECT OF THIS REPORT IS A

FUTURE NEWS EVENT

UNEQUAL STUDENT AID DECLARED UNCONSTITUTIONAL !!!

court decision will force legislative action

ALBANY (SURC) --- A New York State Supreme Court judge in Albany ruled today that the state must support equally all students attending any public or private institution of higher learning in the state. In the ruling, unequal support based upon the institution an individual attends, was declared unconstitutional, and the existing system was charged with creating a classification "which constitutes an invidious discrimination clearly denying equal protection under the law."

While the court took great pains to avoid acknowledging the ramifications of its decision, its implications will demand immediate action by the New York State University Board of Trustees and the State legislature.

The decision is the result of a class action brought by W. H. Miller, a student at Jefferson University, a private medium sized school in upstate New York. Mr. Miller claimed that although he met all the requirements for admission to the State University campus of his choice, he was denied admission because of a lack of space. His chosen course of study, Medieval Literature, was offered at only one of SUNY's campuses.

Since the complainant had no desire to study in any other field, he was forced to seek admission to a private university and to bear the additional financial burden, which he found unreasonable. "I was forced to apply for massive student loans to meet the tuition expense," he said, "costs which I would not have had to bear if my original academic choice had been available. Should not a State supported educational institution have made that choice available?" Mr. Miller considered that the system, which denied him equity in his educational pursuits, should be questioned, and filed his suit.

Spokesman for the Board of Trustees said that "certainly the inequity had to be resolved, but what is the solution." The court action today will force the state to reappraise its role in higher education and the process of support.

Counsel for the state refused comment on the possibility of an appeal. The NYS Student Association declared Miller a hero. Mass rallies were reported on at least thirty private university campuses after the decision. Correspondents at State University facilities said no similar activity was visible.

a.

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INTRODUCTION TO THE SERIES

The Educational Policy Research Center at Syracuse has, in the past four years, developed material that helps clarify and place in perspective emerging issues that face the United States and are the concerns of this decade. The Center works to identify the dimensions of change in the many sectors of society and the impact of those changing realities on education.

This series attempts to translate Center research topics into specific legal issues that are worthy of exploration--issues that point up inequities in service or reveal policy alternatives, and to examine them with new methodologies developed at the Center.

One of the prime forces of social modification and change has been the effect of precedent case law. The events in this series act to focus attention on emerging issues and through them, deliver reasonable alternatives for policy at the state and federal level. Many of the issues in this series do not belong in the courts. They are the concerns of the legislature. But often, citizens demand action faster than can be met through the political areana. The cases and the analysis of them help speed the process of identification and hopefully redirect our federal policy agendas.

What follows is the third inquiry in a series with a selected number of attorneys attentive to the future of education on a national level. The focus may have profound implications for education through the modification of policy agendas for tomorrow.

The case: A student at a private university in New York State sues the State for equal financial support for non-compulsory higher education.

THE COMPANION DOCUMENT IS CASE #4 IN THE SERIES AVAILABLE JULY '71,
PUBLIC-PRIVATE COMPETITION IN HIGHER EDUCATION.

PURPOSE OF THE SERIES

I have chosen the judicial system as a staging area--a theater--that allows one man to argue against the past and interpret his present in such a way as to demand legislative review and, where necessary, action.

I have chosen this strategy for the following reasons. There are emerging in our society precedent cases that, successfully pursued through the courts, set the stage for still more change. These precedent cases can be conjectured about in the present to describe the probable and plausible actions that can be set in motion by further decisions. These can and should be studied as a resource for policy-makers.

Elective offices at all levels of political systems in the United States are for the most part filled with men whose formal educational experience includes some background in law. Legislators define the parameters of acceptable growth and change for society by legislating certain activities and acceptable modes of behavior for the society. This point cannot be overlooked in discussions about policy and decision-making which affect the future.

The rhetoric of futures-thinkers has as one of its basic tenets that the future is filled with alternatives. It is held that we can describe the future we see as an acceptable alternative to today and can plan for its occurrence by striving for certain ends to the deliberate exclusion of others. This assumes that no alternative is necessary; rather, all alternatives are possible and policy can be designed to make them more probable. They may fill the spectrum from good to bad, but each is in turn sufficient as an acceptable future--each an alternative to the present.

To describe alternative futures one conjectures a state of affairs different than today. After locating that future in the continuum of time, past-to-future, one can describe the hypothetical minimum sufficient changes that must occur in order for the specified alternative future to occur. In

effect, a series of "if . . . then" propositions. By conjecture, we mean that men describe emerging new relationships that might never have occurred in the past, in such a way as to demonstrate the plausibility of a future that is new or decidedly different than we have ever known. Conjecture is a leaping into the unknown with a tracing of strategic routes (or plans) in order to describe how a specified future could come to be.

But when men analyze the past to demonstrate how things came to be, they do not conjecture, in this sense. Conjecture is intuitive and deals with the behaviors of men sufficient to reach an un-occurred future; extrapolation is reflective and deals with behaviors which once were really only sufficient, but have come to be seen as necessary by the very fact of their having occurred.

The law does not conjecture; rather, it emphasizes the non-alternative past. The law draws its strength and power from the continuance of our past traditions into the future. Forecasting the future by describing analogies from the past excludes the impact of individual human beings on the lives of men, and treats all men as constant through time, holding similar--never changing--beliefs, values, morals, and needs. What is addressed hre is the mind set that describes emerging futures in terms inconsistent with the rhetoric of alternative futures. The prescriptive power of law is not addressed.

The law is steeped in the past through the emerging history of cases. It depends on the continuance of belief in the meaning of right and wrong. But changes do occur. They occur regularly through various precedents. Often these precedent setting cases are referred to as landmark decisions. What are landmark decisions or precedents? They are nothing more than sufficient alternative ways of describing the meaning of our world so that all that has come before is no longer necessarily correct. Further, they are the conjecture of one man representing another who believes there is an alternative sufficient argument to substantiate his view.

Precedential cases change the shape and meaning of the society. They are as revolutionary in their long-range effects as are the actions of mobs and social class upheavals; but they have a unique distinction that should not be lost in this discussion. Precedent setting cases are always actions of "one man vs. the past"--one man having an alternative sufficient perception of the meaning of his world. In the United States alone, people like Escobedo, Brown, King, etc., coupled with the actions of their counsel, describe to a world a state of affairs where their actions demand reassessment and are heard first in court, then throughout the land. De Toqueville argued that mass movements follow the actions for change initiated within a government, not its inverse. It would appear that any decision of a court is not necessary, only sufficient. But over time these decisions, by repetition, come to be treated as necessary.

Every profession that continues through time develops habits. Habits are hard to break. The actions that comprise the habit come to be seen as necessary ways of behaving, thinking, or acting. We try to break habits when we conjecture about the future. Education in our society is a habit. But educational modes and styles change daily.

The major upheavals in societies today are in many ways directly linked to education--a process not controlled by those who experience it, nor experienced by those who control it. The youth of today are crying out with descriptions of alternative sufficient strategies of preparing themselves for the future and are met on every side by the strategies drawn from the past that are thought to be necessary, imposed on them by the educating system. Both want the young to learn.

- Is the strategy so important that the goal must suffer?
- Is there a necessary way to learn?
- Is our society capable of perceiving alternatives?
- Cannot precedents be set for a change process that is non-revolutionary and allows the disaffected to input into the strategies for learning?

It is an exciting prospect to hope that an idea as simplistic as the iteration of future conjectured goals in the past tense might be a significant way of breaking the mind set of causal links between past and future, at the same time breaking down the habits that lead to an inability to deal with the true possibilities of alternative futures.

"There are two questions at issue: whether the benefits arising out of the (higher) educational process are essentially social and public, or whether they are essentially personal and private; and, if and to the extent that they are social, whether they are essentially local or regional, or whether they are essentially general or national.

It is safe to say that there are both private and public elements, and both local and national aspects of the public elements, in almost any educational process. To justify a significant federal involvement requires a significant degree of public and national concern and benefit. A test of publicness and nationalness is needed.

An educational activity should be a candidate for public funding if and to the extent that it (1) creates non-exclusive capacities; (2) provides for equal access; and (3) is publicly ac accountable."

I would strongly urge any reader concerned with this area to request a copy of the paper, The "Financial Crisis" in Higher Education: Past, Present, and Future, by James C. Byrnes and A. Dale Tussing, June 1971, 30 pp., with particular attention to pp. 22-30, "The Federal Responsibility."

Questions and Policy Issues

- What is the function of non-compulsory higher education: to serve the felt needs of society or the felt needs of individual members of that society?

- If it functions to meet felt needs of society, how does it justify operation of curricula where no need exists?

- If it functions to serve the felt needs of the individual, how does it justify unequal financial support to equal students attending different physical facilities?

- How is either philosophy served by supporting institutions rather than individuals?

- Is the inequity of support consistent with a belief in free choice?

- Where compulsory attendance is not mandated in either twelfth or thirteenth grade, how do they differ in terms of public support?

- What political unit of government if any should support higher education and to what degree?

- What benefits would accrue to society if everyone/none were supported in higher education?

- Is the concept of private estate enhanced or retarded by public support of any individual who can gain admission to public institutions of higher learning?

Note: For further discussions of the underlying issues, see the companion document (#4) in the series, PUBLIC-PRIVATE COMPETITION IN HIGHER EDUCATION, which focuses on the institutional arrangements that spring from the basic issues addressed here.

Background Reading

The research in progress of the following staff of the Educational Policy Research Center at Syracuse that helped shape the broader questions dealt with here are listed below and these documents are available from the Center.

James C. Byrnes and A. Dale Tussing. The "Financial Crisis" in Higher Education: Past, Present, and Future. Prepared for the U.S. Office of Education. Syracuse, N.Y.: Educational Policy Research Center, June 1971.

Thomas F. Green. Education and Schooling in Post-Industrial America. Some Direction for Policy. Presented to the Committee on Science and Astronautics, U.S. House of Representatives, Ninety-First Congress, Second Session, January 28, 1970. Washington: U.S. Government Printing Office, 1970.

Michael Marien. "External Credit and Internal Discredit: Intertwining Developments That May Revolutionize Higher Education." Working Draft. Syracuse, N.Y.: Educational Policy Research Center, January 1971.

Laurence B. DeWitt. "More Universal Higher Education and the Continuing Problem of Equal Opportunity." EPRC Working Draft, December 1970. In Essays in Educational Policy Analysis, W. L. Ziegler, ed., Fall 1971.

Thomas F. Green and A. Dale Tussing. "An Analysis of Disaffection With and Conflict in the Schools." EPRC Working Draft, December 1970. In Essays in Educational Policy Analysis, W. L. Ziegler, ed., Fall 1971.

Warren L. Ziegler. "The Future as Metaphor." In Notes on the Future of Education, a Publication of the Educational Policy Research Center at Syracuse, Vol. 2, Issue 2, Spring 1971.

Warren L. Ziegler, ed. Essays in Educational Policy Analysis. Six essays by EPRC staff members discussing Financing Higher Education, Social Selection Procedures, Equal Opportunity, Disaffection in the Schools, K-12 Policy Changes. Available Fall 1971. 100 pp. $2.50.

THE STUDY MATERIALS

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A.

SURC **Educational Policy Research Center at Syracuse**

April 5, 1971

Dear Sir:

One of the prime forces of social modification and change in this country has been the effect of precedent case law. As a research group performing policy research for the United States Office of Education, we are concerned with the implications of actions in law for education.

Much of the Syracuse EPRC's work is directed toward the implications of policy for the long term future. These "forecasts" are not an end in themselves; rather, they become valuable inputs into a process designed to supply policy-makers with reasonable alternatives which will aid policy-making and planning at the federal level. Similarly, the events themselves act to focus attention on emerging issues and hopefully contribute to the changing policy agendas of the United States.

This letter concerns the third case in a series we are preparing. The first issue in the series dealt with the implications of a successful suit charging fraud against a school board. The concerns of the report helped focus attention on the pressing problems of accountability in education and the increasing number of performance contracts being let in the United States. The second issue dealt with a problem emerging out of our complex society--namely, career obsolescence in a post-industrial society.

This, the third case concerns a major issue in post-secondary education: the nature of public support--who benefits and to what end. We are asking you to consider the implications of a hypothetical court case that might arise and impact on the future of education.

We have enclosed Background Material, which we hope will serve to set a stage for the event in question. With it is a FUTURE "NEWS EVENT" detailing the minimum information of a successful court case. You are being asked to treat it as if it had already occurred while addressing each of the enclosed questions.

The news event concerning the case is stated in such a way as to help you deal with it as an occurred event rather than as improbable and not worthy of discussion. Many things that "could never happen" happen. We ask that you be as precise or as conjectural in your responses to the questions on the cards as you like.

Syracuse University Research Corporation, 1206 Harrison Street, Syracuse, New York 13210 tel: 315-477-8439

You have been asked to participate in this exercise because of your past work and concern in the joint fields of law and education. Please return the response cards within two weeks from your receipt of this letter. You will receive a copy of the final report of this effort as soon as it has been prepared (usually two months).

Several populations are being addressed in the inquiry:

Chief State School Officers
Chancellors and Presidents of Colleges and Universities
Legislators in State and Federal Office
House Counsel for Major Corporations in Education
Deans of Law Schools
Law Review Editors
Experts in the Field of Post-Secondary Education
Private Practicing Attorneys
Counsel for Relevant Agencies

While all individual responses will be treated anonymously in the report, we would like to include a list of respondents. If, for any reason, you would prefer to have your name deleted from this list, please inform us of this when you return your questionnaire. If you have not received a copy of the earlier reports in this series, and would like to, please note this on the last card.

If you are unable to respond personally, please ask an appropriate colleague to respond for you or in his own right, noting his name and title as respondent.

Thank you for the time and attention you devote to this project, and for your concern for the future problems facing education in the United States.

Sincerely,

Stuart A. Sandow, Ph.D.
Educational Policy
Research Center/Syracuse

SAS/plb
Enclosures

B.

Background Material

Summary of Points Made in Brief

Point: There is no compulsory attendance in post-secondary institutions.

Point: Attendance at a state supported Junior College does not necessarily guarantee acceptance into a university.

Point: State University Centers offer equal and often better services than many private universities.

Point: Admission is limited by space at State Universities.

Point: A degree from a public institution is equal under the law to one awarded from a private university.

Point: Both private and public universities offer a degree in the plaintiff's chosen field: Medieval Literature.

Point: There is almost 0% demand by society for individuals with degrees in this and similar specialties.

Point: Students attending public institutions pay $400 a semester.

Point: Students attending private institutions are supported to a maximum of $400 a semester.

Point: Students are not discriminated against at public institutions based on need.

Point: A greater percentage of students attending private universities apply for student loans.

C.

SURC Educational Policy Research Center at Syracuse

FUTURE NEWS EVENT

UNEQUAL STUDENT AID DECLARED UNCONSTITUTIONAL !!!

court decision will force legislative action

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Spokesman for the Board of Trustees said that "certainly the inequity had to be resolved, but what is the solution." The court action today will force the state to reappraise its role in higher education and the process of support.

Counsel for the state refused comment on the possibility of an appeal. The NYS Student Association declared Miller a hero. Mass rallies were reported on at least thirty private university campuses after the decision. Correspondents at State University facilities said no similar activity was visible.

Syracuse University Research Corporation, 1206 Harrison Street, Syracuse, New York 13210

D.

Questions Addressed to Respondents

1. What is the earliest possible date for the case reported here to emerge in a State Court?

2. If you were preparing the plaintiff's case, how might you argue?

3. If you were preparing the defense, how might you argue?

4. Other causes of action that might arise from the success of this action are...?

5. What suggestions would you make to the legislature to prevent the action occurring, forestall, or nullify the action?

6. How might the State act to satisfy the court order?

7. From your knowledge base, what implications do you see a case of this type having on the future of higher education in this country?

8. If the case were reversed on appeal, what alternative actions might students bring to force redress, if any?

9. Do you feel the student action for equal protection is a valid argument? On what grounds can the State justify unequal support of higher education?

10. If you see the event as beneficial to society, what lines of approach might legislators/educators/interested publics do to bring about the occurrence of the benefits sooner than you conjectured above? If you see the event as threatening to society, what lines of approach might be brought to bear to forestall the event?

11. I understand that my responses will be treated anonymously.

    I (am, am not) willing to have my name mentioned as a respondent to this inquiry.

    I (would, would not) be willing to act as a respondent in furhter studies in this series.

    I (would, would not) like to receive a copy of the earlier reports in the series: FRAUD and/or SOCIAL SECURITY FOR OBSOLETE EDUCATION.

INTRODUCTION TO RESPONSES

- The major conclusions outlined on the following page in no way are intended to replace for the reader the discrete and reasoned positions and arguments that follow. They are merely intended to capsulize positions. They do not reflect the lucid and articulate divergent opinions suggested by respondents.

- The inquiry and the major conclusions do not represent any attempt at delivering consensus. I firmly believe in the efficacy of human deliberation and to that end the most important material in this document is in the array. It is left to the reader who turns to this report for background and ideas on the problem to pick from the array those bits and pieces he chooses to believe and take guidance from.

- This approach to the delivery of information is imperative in that it allows the sustained divergence of opinion until it is necessary to choose.

- 200 individuals were invited to respond.

- 28 responded by May 5th, 4 weeks after the mailing.

- Of the respondents, 16 were willing to be identified.

MAJOR CONCLUSIONS AND REPRESENTATIVE EDITED RESPONSES

1. 80% of respondents see the case emerging within 5 years

> Such a case could emerge immediately under a show cause order or other plea for equitable relief based upon allegations of irreparable injury.
>
> *State Counsel*

> Given the rapidly evolving standard under the equal protection clause of the Fourteenth Amendment, I would not be surprised to see such a decision as early as 1972.
>
> *Law Student*

> The case may appear at that point in time when a college education is as necessary from a sociological standpoint as a high school education is today.
>
> *Law Student*

> Have no experience with New York courts. All indications are, the dockets are very crowded. Since the facts here indicate the case is at the trial court level now, I presume you mean the question to be how long until the case reaches an appeal court. My guess would be 18 months.
>
> *Law Review Editor*

2. Arguments for plaintiff were predominantly focused on equal protection or unreasonable standards of selection

> . . . private schools have in a sense become an arm of the State and one should be as eligible to obtain financial support from attendance at private as well as State schools. In fact, it may be a savings to the State to have Miller attend a private school. - Aid here is to Miller directly and does not involve the question of government aid to private schools--same as G.I. benefits for education.
>
> *Law Review Editor*

Equal protection clause of Constitution. State has undertaken to finance education of all at State universities regardless of need (rich students not turned away); hence it must finance all others to equal extent. No rational distinction between public-private college or education to justify failure of equal support.

Law Student

I would never consider preparing the plaintiff's case.

Law Review Editor

The State has granted certain students special privileges (low tuition), which results in a discrimination against plaintiff. The classification for such differing treatment is not recoverable, since it stems not from the plaintiff's academic qualifications, but from a lack of space in his chosen field of study.

Law Review Editor

3. Arguments for the defense focused on reasonable standards of selection--not forced to go to private institution--no cause

I would argue that the criterion is not perfection but reasonableness. Just as a place cannot be guaranteed to all, neither can particular course offerings. As long as the criterion of reasonableness has been satisfied and the judgments made were neither arbitrary nor capricious, due process and equal protection have been satisfied.

State Counsel

Post-secondary education is not compulsory, and provision of such education by the State is not a duty. The right to attend State colleges is a benefaction of the law, and one who wishes to become a beneficiary of the gift must submit to conditions precedent thereto . . .. The plaintiff may reapply at another time, but enjoys the right to be educated by the university. This decision to attend a private university is his own.

The classification made by the State, with respect to admittance into the State University System, is reasonable.

Law Review Editor

There is no duty on the part of the State to provide post-secondary education to its citizens; if lack of space is not a proper criterion for denying enrollment, then neither is that of turning a student away because he is not qualified to be admitted in the first place. If the plaintiff states that equal protection of the laws applies to all students, he must show specifically where he is being denied that protection. . . .. The plaintiff cannot be heard to complain when he himself chooses a course of action which causes him financial hardship.

University Administrator

Although the State permits individuals to choose the curricula they wish to follow, the SUNY system has a responsibility to provide maximum amounts of space in those curricula for which society has the greatest need. When available spaces are filled, the individual has the further choices of (1) changing his curricular objective, (2) waiting for a space to become available in a year or two, or (3) going to a private institution. The State does not attempt to guarantee space for every wish or whim.

Education Official

4. 60% saw other public institutions like hospitals coming under attack

Suit for relief in the form of busing professors to different schools so as to "equally" distribute the better professors.

Law Review Editor

Students might also contend that the State must bear the burden of their expenses for pursuit of studies, not available at the State University (perhaps the State has a duty to provide such a choice).

Such cases would be aimed at evolving a duty to educate beyond the secondary level.

Law Review Editor

. . . actions by private institutions which are forced to meet a portion of the alleged obligation of the State.

State Counsel

Individuals who would apply to state or municipal run hospitals and complain of unequal protection of the laws when they are denied admission because of lack of space in those hospitals.

University Administrator

5. The predominant suggestion to the legislature was to change admission policy

Mandated student/teacher ratios in higher education law which would let any student study on his own and take final exams for degree or credit.

University Official

Specific provisions in legislation that course offerings are limited by availability of space and courses filled on first come-first served basis; that the offering of any course or courses is no guaranty that all may take them; requirement that all applicants for admission either be required to indicate alternate choices or that university be specifically empowered to make substitution where course has been filled or may be withdrawn.

Attorney

1. That the State University Legislative Act be amended to provide only for instruction in specified curricula such as engineering, law, medicine, etc., and one general liberal arts curriculum.

2. That legislation be enacted to provide financial aid, based on need, to all individuals on an equal basis regardless of place of attendance. Such aid would vary widely according to the family financial situation.

Education Official

Require tuition to be paid in State secondary institutions based on cost.

University Counsel

6. Suggestions to the State included: loans to all individuals - State institutions reflect cost - minimum grants to all

Allow the State education system to be run as a private corporation, increase tuition expenses to State schools, in effect giving no support to those attending State schools.

Law Student

The State might allocate funds purely on the basis of need--regardless of the school attended by the individual applicant.

Law Review Editor

(1) By providing night schools or extension courses in other fields.

(2) By providing such students the same amount of financial aid as is provided to students admitted to State universities, less the amount paid by students admitted to State universities.

University Administrator

If this judgment is entered as final, the legislature is placed in a precarious position. Suspension of the university system would be too drastic, and open admissions would not be immediately economically feasible.

Provision for payment of all tuition costs in excess of $400 to students at private schools would satisfy the judgment. The legislature would, of course, construe the judgment in as strict a manner as possible, and could apply such payments only to State students who qualified for admittance to the State University and who had sought such admittance. Such a provision would satisfy the fact situation faced by the court and subsequent challenges (.e.g., by a student whose field of study is not offered at the State School) would be necessary for further development.

Law Review Editor

7. Implications for the future of higher education included: test without attendance - death of private schools - more freedom of choice for poor

To some extent, it might enable poorer students to attend better private universities. Generally, however, except for certain

administrative difficulties, I do not believe such a decision would have any substantial effects if a need basis is adopted. If anything, the general level of higher education would probably improve.

Law Editor

More politics to keep esoteric courses alive - More efficiency in teaching with data to support student/teacher ratios - More homogenization of courses to justify flexibility of faculty size - More grad emphasis on specialties.

University Official

This principle could be expanded to apply to individual course registrations, thus forcing education to expand its offerings to meet what may prove to be transitorily popular course offerings, i.e., sociology--psychology in our present era.

Query: What happens to an overexpanded faculty when student preferences change, i.e., aerospace and engineering of a few years ago?

State Counsel

Every person will be guaranteed 4 years of college or the State universities will be spun off from the State to become self perpetuating institutions.

Attorney

8. If the case were reversed on appeal, 85% suggested lobbying or other forms of civil protest

Massive strikes, nonpayment of tuition, boycotting of universities on a large scale, political work for candidates who support the students' positions.

Law Student

Possibly a due process claim for lack of valid standards in administering state funds.

Law Editor

An individual action for damages in the Federal Court based on constitutional issues of equal protection and due process.

State Counsel

Bring into public scrutiny the admission procedures now used.

University Official

None--don't and shouldn't have any redress--but be thankful for the excellent opportunities they do have.

University Official

9. 75% felt the student action for equal protection is invalid

No, I don't believe equal protection to be a valid argument. The State can justify it on the grounds that education is a privilege and not a right.

Law Student

If one feels that the State should provide secondary education to all those who wish to take advantage of it, then the argument is valid. The argument fails only insofar as one considers the State University a limited privilege (limited by the physical and economic resources of the State). It might be said that once the State undertakes to provide such education, it should reopen to all those who meet minimum, reasonable criteria (such as plaintiff, here), and that it has created an obligation to provide his college education, at the State University if possible, or through subsidies for private education.

Law Review Editor

I really don't because the State should not be placed in a position of being required to supply post-secondary education to its citizens. Providing the choice that they do is sufficient; changing that to an obligation would be disastrous.

University Administrator

10. 60% saw the event as beneficial

I think educators and legislators can make clear to the public that "well-off" students are being subsidized by State funds while poorer students are being arbitrarily denied access to such benefits (in some cases). This is an inefficient allocation

of public monies and is totally unjustified in view of the need for education in today's job market. Public awareness is essential.

Law Editor

The individual units within the State system should make every effort to accommodate offerings to student needs. The answer, I feel, becomes a practical one and it seems to me capable of practical resolution. I would suggest that the students seeking to specialize in particular offerings should have some priority for admission at the campus where his field is available.

State Counsel

Since I believe that the present system of private-public higher education is valuable in a free society, I see the event as threatening to society because I believe its inevitable end result will be the end of one or the other of the two sub-systems. Unfortunately, I see no way to forestall it short of drastic limitation of public higher education to professional curricula with space limited to estimates of society's needs for doctors, nurses, engineers, chemists, etc.

Education Official

The push (process) may be good; I am not sure of the results (education opportunities based on request). Felix domesticus can be undressed in many ways--the push should be for more than one way to get thru <u>any</u> program; to break traditional program format. A law suit to give credit and degrees based on student performance rather than courses taken would be most beneficial.

University Official

COMMENT

- We have two issues under address: the distribution of public monies for higher education and the rights to the benefits of higher education.

- When we discuss the distribution of public monies for the support of higher education, we tend to think in terms of institutions, schools, systems . . . places and things.

- When we discuss the distribution of public monies for the support of students, we tend to think in terms of loans, scholarships, incentives . . . people and needs.

- But we are really concerned with the distribution of public monies for the support of <u>learning</u>.

- Similarly, when we discuss the rights people have and focus on equal protection, we tend to think of diverse individuals with diverse interests all having a common need to have society assure their equal rights and freedoms.

- When we discuss these rights and focus on equal opportunity, we tend to think of similar individuals with similar skills and similar interests all wanting a common good.

- But when we focus on the concept of equal access, we tend to think of diverse individuals with diverse interests each needing different opportunities equally protected.

- I would assert that the problems now faced in higher education financing might benefit from considerations of alternative concepts. Our time linked rhetoric often precludes certain kinds of dialogue while enhancing or perpetuating others.

- The issue, then, is to see how we might view educational policy differently if our goals were articulated in terms of <u>learning opportunities</u> and <u>equal access</u>, rather than <u>support for higher education</u> and <u>equal opportunity</u>.

SAS

APPENDICES

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II. List of Respondents
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III. Future News Events
Examined in this Series to Date
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Appendix I

DISAGGREGATE EDITED RESPONSES

1. What is the earliest possible date for the case reported here to emerge in a State Court?

When a college education is as necessary from a sociological standpoint as a high school education is today. *(Law Student)*

Given the rapidly evolving standards under the equal protection clause of the Fourteenth Amendment, I would not be surprised to see such a decision as early as 1972. *(Law Review Editor)*

Have no experience with New York courts. All indications are, the dockets are very crowded. Since the facts here indicate the case is at the trial court level now, I presume you mean the question to be how long until the case reaches an appeals court. My guess would be 18 months.
(Law Review Editor)

Such a case could emerge immediately under a show cause order or other plea for equitable relief based upon allegations of irreparable injury.
(State Counsel)

30-60 days. *(Law Review Editor)*

All too soon. Approximately 5 years. *(Law Review Editor)*

I see no barriers to the pursuit of such a cause of action in the very near future. Maintenance of such a suit, however, must of necessity be made in consideration of the probability of its being successful. Such an action, then, might be foreseeable in the next 5 years. Of course, such a case could arise today, with a more restricted review of the issue. Certain developments, such as recognition of higher education as a more essential ingredient for fulfillment of the needs of society, might provide a more favorable atmosphere for the plaintiff. *(Law Review Editor)*

1976. *(Law Review Editor)*

The action could be filed now in some states. It might take 1 to 3 years to be resolved. *(Attorney)*

Since the issue involves an article of the United States Constitution, and also involves a State as a party, there should be no time delay in the State seeking an appeal. *(University Administrator)*

1978. *(University Official)*

Three months. *(Attorney)*

1984. *(Attorney)*

October 1971. *(Education Official)*

Could happen any time, but believe this case would be reversed on appeal.
(University Counsel)

2. <u>If you were preparing the plaintiff's case, how might you argue</u>?

I would argue that I have an unconditional right to an education; that while this right can be satisfied by attending a public or a private institution, the economic burden of each must be identical.
(Law Student)

A. The classification between students attending private universities and public universities is not reasonably related to any legitimate state interest. Since education is essentially equal in these types of institutions, the State has no legitimate interest in favoring students attending public universities.

B. The State's interference with the freedom of choice of individual students, without justification, constitutes a denial of due process and equal

protection of the law

C. Possible argument: The right to education, like the right to vote, is fundamentai to our society. Thus, although a State may deny the right generally (i.e., support no students, or allow no one to vote), it cannot deny the right to some and grant it to others, unless such classification is necessary to achieve compelling State interest.

(Law Review Editor)

1. Miller and his parents are paying taxes to support others who are given the benefit of an education of their choice, hence only fair that Miller is given same privilege.

2. What does it matter to the State whether Miller attends a private or State school--it has the same interest in giving support to him no matter which school attended.

3. State schools may have entered the field of education more completely, had private schools not done so. Hence, private schools have in a sense become an arm of the State and one should be as eligible to obtain financial support from attendance at private as well as State schools. In fact, it may be a savings to the State to have Miller attend a private school.

(Law Review Editor)

Argument would be constitutional with emphasis on equal protection of laws, i.e., the State has an obligation to offer educational opportunity on an equal basis to each qualified individual student.

(State Counsel)

I would never consider preparing the plaintiff's case.

(Law Review Editor)

The argument would be based upon the equal protection clause. Although plaintiff here meets the requirements for admission to the State school, space limitations have forced him to accept certain burdens not imposed upon students attending State Universities. The State has granted certain

students special privileges (low tuition), which results in a discrimination against plaintiff. The classification for such differing treatment is not reasonable, since it stems not from the plaintiff's academic qualifications, but from a lack of space in his chosen field of study.

(Law Review Editor)

I would argue that consonant with our principles of freedom of choice, all students have a right to study in their chosen field. If the State cannot provide such training in a public institution because of space (i.e., that subject is being taught), then a student forced to attend private schools is denied equal protection of the laws. *(Law Review Editor)*

Education is the individual right of the child and his parents. If the State invades that right for public policy reasons, it must see that each person is treated equally. The present system is inherent with possibilities of abuse as this case demonstrates. *(Attorney)*

Assuming that the plaintiffs are students who have been denied admission because of lack of space, the use of the equal protection of the laws clause of the 14th Amendment is most proper. Taxes are paid to support State institutions; qualified students who are admitted to State Universities because they do meet such qualifications should not be discriminated against for registration purposes purely on the grounds of lack of space. Our laws do not state that equal protection extends only on a first come-first served basis. Why should one qualified student be selected over another? *(University Administrator)*

No data to support initial student/program ratios; arbitrary decision based on archaic values of teaching staff. Passage thru the program should be based on passing criterion exams (expansion of notion of accountability in public schools; contract performance, etc.). *(University Official)*

(a) Discrimination based on limiting opportunity to earliest registrants; (b) Arbitrariness in limiting availability of courses; (c) Failure to provide equal educational opportunities to all similarly situated.

(Attorney)

Unable to argue plaintiff's case. *(Attorney)*

The purpose of the public higher educational system is to meet the felt needs of individuals. Therefore, provision should be made by the system to accommodate Mr. Miller. In the absence of such provision, the State, which unreasonably denied him admission to the State unit of his choice, should provide him with equal support; i.e., pay all but $400 of his tuition at the private institution. *(Education Official)*

As indicated in the News Article and Brief points.
(University Counsel)

3. <u>If you were preparing the defense, how might you argue?</u>

Education is not a right but a privilege, therefore the State has no constitutional obligation to support it. Even if education were a right, the Constitution could not be utilized by private persons as a means of forcing the State to support their attendance in private schools. Also, the plaintiffs have no standing to sue, since they were not forced to apply to the private school in the first place, and secondly, because their acceptance in such school is a privilege. *(Law Student)*

A. The classification is a reasonable one. The role of the State regarding <u>public</u> universities necessitates a reasonable amount of State control. This control extends to insuring that students attending these universities can afford to attend.

B. The State funds available to support higher education are limited. To require the State to provide equal funds for students attending private universities would reduce substantially the per student allotment. As a result, few students would receive sufficient State funds to enable them to attend any univeristy.

C. Due to B, the State has a compelling interest which makes necessary the existing classification. *(Law Review Editor)*

1. Result here is not serious enough to constitute invidious discrimination.
2. Equal Protection clause not intended to apply to this class of case--i.e., not discrimination here based on race, sex, etc.
3. Facts are not clear in this regard, but perhaps Miller met basic requirements for entrance, but others who were accepted had better qualifications, and nothing prevents State from having high standards in selection procedures, nor only allowing the needed ratio of students to need/jobs in its schools.
4. Result of this decision would allow private schools to receive (albeit it indirectly) federal aid without restrictions which normally apply to State institutions, i.e. Fourteenth Amendment, etc.
5. State not justified in taxing the many to benefit the few.
6. State does not have onus to provide every form and subject matter desired by every individual for his education. *(Law Review Editor)*

The nature of the State's obligation is to offer reasonable opportunity for education in its State-supported institutions. In the instant situation the State has taken reasonable steps to meet anticipated demand. I would argue that the criteria is not perfection but reasonableness. Just as a place cannot be guaranteed to all, neither can particular course offerings. As long as the criteria of reasonableness has been satisfied and the judgments made were neither arbitrary nor capricious, due process and equal protection have been satisfied. *(State Counsel)*

Equality of opportunity does not mean an equal distribution of proprietary interests, whether they be in the form of land, other wealth, or education. The difference in costs and the qualities of institution promote the type of competition for educational services which places the best students in a position to do the most for society. *(Law Review Editor)*

Post-secondary education is not compulsory, and provision of such education by the State is not a duty. The right to attend State colleges is a benefaction of the law, and one who wishes to become a beneficiary of the gift must submit to conditions precedent thereto. The power of determining who shall be

eligible for admission lies with the legislature (such power can be delegated to the Board of Regents), and, unless such discretion is abused, and the rules to admission are arbitrary and unreasonable, the decision of the legislature will be upheld. Here, there was insufficient space, a valid reason for denial of this benefit offered by the State. The plaintiff may re-apply at another time, but enjoys no right to be educated by the University. This decision to attend a private university is his own.

The classification made by the State, with respect to admittance into the State University System, is reasonable. Furthermore, plaintiff's proposed course of study does not necessarily further the function of the university.

(Law Review Editor)

The argument for the defense is that the "classification" of the rejected student was not arbitrary or capricious but instead reflected fiscal realities and as such is no denial of equal protection.

(Law Review Editor)

The police power and the "public good" policy do not require perfection of imperfectable systems. The educational system is doing the greatest good for the greatest number of persons. *(Attorney)*

There is no duty on the part of the State to provide post-secondary education to its citizens; if lack of space is not a proper criterion for denying enrollment, then neither is that of turning a student away because he is not qualified to be admitted in the first place. If the plaintiff states that equal protection of the laws applies to all students, he must show specifically where he is being denied that protection. The university did not deny him admission--it merely denied him registration for his specific course in Medieval Literature. That course is his choice--so also was it his choice to turn to a private institution at that particular time. There is no indication that the State University would not be able to offer his course at another time. The plaintiff cannot be heard to complain when he himself chooses a course of action which causes him financial hardship. *(University Administrator)*

The plaintiff could have waited a year (one waits in line for a number of public services), or gone outside the State. *(University Official)*

(a) No obligation on the part of a university to guaranty an offering to all students; (b) Right of university to close admissions when classes are filled; (c) Necessity that course offerings must be limited by reason of space limitations; (d) Obligation to guaranty specific course offerings to all could result in denial of other course offerings to greater numbers of students by reason of space utilization and availability of funds; (e) The entire nature of course offerings must necessarily be limited by space; (f) The right to a college education does not guaranty an individual that he can be assured of taking every course he would like to take. *(Attorney)*

The State schools regardless of level are to be treated as extensions of the original "common" schools which were available to everyone. The fact that a person selects an uncommon course does not require the State to provide it for him. The legislature may provide many schools or none, the only requirement is that they do not set out to discriminate against a group. Equal protection does not mean the State must furnish everyone everything. *(Attorney)*

Although the State permits individuals to choose the curricula they wish to follow, the SUNY system has a responsibility to provide maximum amounts of space in those curricula for which society has the greatest need. When available spaces are filled, the individual has the further choices of (1) changing his curricular objective, (2) waiting for a space to become available in a year or two, or (3) going to a private institution. The State does not attempt to guarantee space for every wish or whim. *(Education Official)*

Difference between primary education (where attendance is compulsory) and secondary education (where student has choices, e.g., 1) to attend or not, 2) to go to public or private denominational or non-sectarian, co-educational or not, etc.). State has <u>not</u> yet established a policy of furnishing all

kinds of education to all people. State has all it can do to furnish primary education plus a limited amount of secondary.

(University Counsel)

4. Other causes of action that might arise from the success of this action are . . .?

An action to gain access to a school which provides a certain type of training which other institutions do not provide, and which school refuses admittance on the grounds of number or academic unsuitability. - An action to revoke all payments of tuition and in turn provide for educational expenses by increasing the tax rates. *(Law Student)*

Possibly a challenge to public supported hospitals might ensue from this decision. Other State-supported institutions, such as welfare programs, might also be subject to attack. *(Law Review Editor)*

Ramifications are far reaching--students at private trade schools, etc., could request aid. Other training program participants could also claim aid from the State if no training was provided by the State. Also raises question of why doesn't the State provide financial support for all types of training beyond high school. It would be just as invidious discrimination to give financial aid only to those who go to a university--don't non-university persons who still need training after high school, and contribute as much to society as those who go to a university; why then limit aid to university students? *(Law Review Editor)*

Civil actions for damages by similarly-situated students to recover their costs. Also actions by private institutions which are forced to meet a portion of the alleged obligation of the State.

(State Counsel)

Injunctive relief in the form of busing professors to different schools so as to "equally" distribute the better professors.

(Law Review Editor)

It might lead to a decision which calls for compulsory provision of post-secondary education. This would be quite an extension of plaintiff's case, but is somewhat analogous. Would not an applicant who fails to meet the qualifications for admittance into the public school (not so with plaintiff, here, although he is rejected due to valid space restrictions in the University System), be the subject of invidious discrimination? - Students might also contend that the State must bear the burden of their expenses for pursuit of studies not available at the State University (perhaps the State has a duty to provide such a choice). - Such cases would be aimed at evolving a <u>duty</u> to educate beyond the secondary level.

(Law Review Editor)

Causes of action: (1) taxpayers' suit to eliminate Medieval Literature from curriculum in public institutions; (2) suits by public institution students at the Medieval Literature campus to establish the course at other campuses; (3) suits by anyone attending private schools to force State to improve quality of their education; (4) taxpayers' suit to cut cost of private education. *(Law Review Editor)*

Suits by parents of children in private church-related schools charging that the public school system is inherently discriminating.

(Attorney)

Individuals who would apply to state or municipal run hospitals and complain of unequal protection of the laws when they are denied admission because of lack of space in those hospitals. Should the State then have to pay for their space in a private hospital or other institution?

(University Administrator)

Criterion-based programs rather than output-based on normal curve. More emphasis on "University of the Air," etc. *(University Official)*

(a) Compelling or making available specific forms of housing accommodations, i.e., apartments for married students as opposed to rooms for individuals; (b) Forced establishment of Day Care Centers for children of married students; (c) Forced establishment of specific curricula demanded by students without any say by university officials. *(Attorney)*

Elimination of all private schools; elimination of all public schools; guaranteed educational attainment. *(Attorney)*

(1) Demand that SUNY offer all curricula at all campuses; (2) That space limitations be lifted; (3) That SUNY offer any curriculum requested by any individual. *(Education Official)*

Many--probably limited only by various kinds of educational programs now offered or which may in the future be offered by private institutions in New York--or perhaps anywhere else. *(University Counsel)*

5. What suggestions would you make to the legislature to prevent the action occurring, forestall, or nullify the action?

I don't think the legislature need feel itself that pressed, however, it could decrease tuition, increase space for students and disciplines to be studied.
(Law Student)

To avoid such an action, the legislature probably would be required to alter the bases on which it allocates funds--for example, it might accept only the highest quality of student in the public universities (apparently, as Miller alleges, this is not now the case). This, however, might still create an equal protection problem. *(Law Review Editor)*

If the action questioned here really violates the equal protection clause (which I don't think it does), then there isn't much the Legislature can do--except hire excellent counsel or increase taxes.
(Law Review Editor)

I would recommend that the Legislature take no action pending a final determination of the legal principles involved.

(State Counsel)

No suggestions. *(Law Review Editor)*

Legislatures are adept at formulating statutes, etc., which avoid the impact of decisions, without dealing with the underlying issues involved. Here, for example, one way in which harsh results could be avoided, is to use their discretion to promulgate much more rigid entrance requirements, so that few applicants would be placed in plaintiff's position.

(Law Review Editor)

1) Give aid to students attending private schools based on financial need;
2) Raise tuition at State schools. *(Law Review Editor)*

I would suggest that grants be made to the student sufficient for him to compete with students in State owned schools.

(Attorney)

The legislature should pass a statute which clearly sets forth the non-responsibility of the State to provide for post-secondary education for its citizens; that such education is personal to the individual usually in some professional manner and the State cannot be assumed to be responsible for such career action.

(University Administrator)

Mandated student/teacher ratios in Higher Education Law which would let any student study on his own and take final exams for degree or credit.

(University Official)

Specific provisions in legislation that course offerings are limited by availability of space and courses filled on first come-first served basis; that the offering of any course or courses is no guaranty that all may take them; requirement that all applicants for admission either be required to

indicate alternate choices or that university be specifically empowered to make substitution where course has been filled or may be withdrawn.

(Attorney)

Admission to State schools should be handled in such a way as to prevent any claim or discrimination against him. Individual grants to persons attending private schools equal to the grants made to State universities. Spin off the universities to become self perpetuating without any direct State aid.

(Attorney)

1. That the State University Legislative Act be amended to provide only for instruction in specified curricula such as engineering, law, medicine, etc., and one general liberal arts curriculum. 2. That legislation be enacted to provide financial aid, based on need, to all individuals on an equal basis regardless of place of attendance. Such aid would vary widely according to the family financial situation. *(Education Official)*

Require tuition to be paid in State secondary institutions based on cost.

(University Counsel)

6. How might the State act to satisfy the court order?

Allow the State education system to be run as a private corporation, increase tuition expenses to State schools, in effect giving no support to those attending State schools. *(Law Student)*

The State might allocate funds purely on the basis of need--regardless of the school attended by the individual applicant.

(Law Review Editor)

An approach would be to offer financial aid of a set amount to anyone who wanted to obtain post high school training regardless of type of training, etc. Or State may require all students, attending State Universities, pay for their education on a cost basis. *(Law Review Editor)*

Assuming final judgment in favor of the student, a State educational institution could find a place for the successful litigant. This, of course, implies an obligation to meet the requirements of similarly-situated students, or provide aid to meet their incremental expenses at private institutions.
(State Counsel)

Guarantee Loans to students. *(Law Review Editor)*

If this judgment is entered as final, the Legislature is placed in a precarious position. Suspension of the university system would be too drastic, and open admissions would not be immediately economically feasible.

Provision for payment of all tuition costs in excess of $400 to students at private schools would satisfy the judgment. The Legislature would, of course, construe the judgment in as strict a manner as possible, and could apply such payments only to State students who qualified for admittance to the State University and who had sought such admittance. Such a provision would satisfy the fact situation faced by the court and subsequent challenges (e.g., by a student whose field of study is not offered at the State school) would be necessary for further development. *(Law Review Editor)*

1) Raise tuition at State schools; 2) long-term loans at no interest; 3) Eliminate Medieval Literature from State curriculum.
(Law Review Editor)

1) Close the universities and make uniform grants to students. 2) Simply add classes as needed. *(Attorney)*

1) By providing night schools or extension courses in other fields. 2) By providing such students the same amount of financial aid as is provided to students admitted to State Universities, less the amount paid by students admitted to State Universities. *(University Administrator)*

Open door policy (even in Graduate School). *(University Official)*

Make tuition supplements to private schools.

(Attorney)

1) Appeal; 2) require SUNY to raise its tuition to a sustaining level.

(Education Official)

Don't--rather appeal--then if lose would probably have to either 1) charge tuition in State schools based on cost, 2) offer more courses in State schools, 3) take over all private secondary schools.

(University Counsel)

7. From your knowledge base, what implications do you see a case of this type having on the future of higher education in this country?

Possibly increased tuition costs at State-supported institutions. Greater attendance at private institutions. Ability of low income students to attend private institutions. *(Law Student)*

To some extent, it might enable poorer students to attend better private universities. Generally, however, except for certain administrative difficulties, I do not believe such a decision would have any substantial effects if a need basis is adopted. If anything, the general level of higher education would probably improve. *(Law Review Editor)*

May involve the State to the point of substantially financing all higher education or forcing students to pay the entire cost of education themselves. May also mean more State control over private universities.

(Law Review Editor)

An enforced obligation on society to guarantee that qualified students can pursue any field of higher education offered in the State system, and if his field is full, with State subsidy in a private institution. This principle could be expanded to apply to individual course registrations, thus forcing education to expand its offerings to meet what may prove to be transitorily

popular course offerings, i.e., sociology--psychology in our present era. Query: What happens to an overexpanded faculty when student preferences change, i.e., aerospace and engineering of a few years ago?

(State Counsel)

A General downward trend in the quality of best students.

(Law Review Editor)

Such a case could help delineate a duty on the part of the State to provide post-secondary education to all those who wish to pursue it. Whether this concept could lead to the demise of the private school system and the development of an Open State University scheme, or a structure of State subsidies for college students (similar, in respects, to the proposed Education Voucher Systems for Elementary and Secondary Schools, whereby the State could fulfill its duties to provide education by giving parents subsidies which could be used in public or private schools) is not entirely clear.

(Law Review Editor)

It would greatly improve the quality and availability of higher education in this country. *(Law Review Editor)*

More money will be spent on higher education or the system of public support will have to be abandoned. *(Attorney)*

If a strict interpretation is made that State universities are not required to admit such qualified students and that the State is not obligated to provide financial assistance under the equal protection clause of the Constitution, the effect is a simple one: all private institutions will eventually dry up and blow away. They simply cannot compete with State universities. If by the same token, the State universities should expand so as to blanket a State, then again, the private universities and colleges would similarly die. The State should not take on itself the total educational responsibility for its citizens. This is opposed to the very concept of private enterprise in this country. Further, it is a dangerous concept, not because of its philosophy, but because of the people running it who might abuse it.

(University Administrator)

More politics to keep esoteric courses alive - More efficiency in teaching with data to support student/teacher ratios - More homogenization of courses to justify flexibility of faculty size - More grad emphasis on specialties.

(University Official)

Limitations of course offerings; elimination of course offerings.

(Attorney)

Every person will be guaranteed 4 years of college, or the State universities will be spun off from the State to become self perpetuating institutions.

(Attorney)

1) Force public higher education to base its availability on the felt needs of society; 2) Bring an end to public higher education except for selected professional institutions such as medical schools; or 3) Bring an end to all private higher education. *(Education Official)*

Very bad. Would stultify rather than advance. We can not afford it--and if it is required, would have to cut somewhere else in education to its detriment.

(University Counsel)

8. If the case were reversed on appeal, what alternative actions might students bring to force redress, if any?

Massive strikes, nonpayment of tuition, boycotting of universities on a large scale, political work for candidates who support the students' positions.

(Law Student)

Possibly a due process claim for lack of valid standards in administering State funds. *(Law Review Editor)*

Appeal to Legislature for aid, via lobbying, etc., or running their own candidates. More likely to engage in forms of civil disobedience.

(Law Review Editor)

An individual action for damages in the Federal Court based on constitutional issues of equal protection and due process.

(State Counsel)

A 1983 civil rights action against the State.

(Law Review Editor)

He might seek mandamus proceedings to secure his acceptance at the State University. Since space limitation seems to be a reasonable basis for rejection (at least on a temporary basis) of a qualified applicant, such a course of action would be of dubious value. It would, however, raise the question of compulsory open admissions into post-secondary educational institutions.

(Law Review Editor)

Injunction to force admittance at State school even though crowded.

(Law Review Editor)

Possible action for damages against individual trustees or school personnel for individual acts constituting unequal treatment.

(Attorney)

1) Seek legislation; 2) Appeal to great foundations in this country for financial support to private institutions; 3) Seek congressional legislation to increase student loans and scholarships.

(University Administrator)

Bring into public scrutiny the admission procedures now used.

(University Official)

Appeal to the Legislature for specifically required course offerings or course availability in all cases, or providing for payment to students of costs of taking course at other than State University.

(Attorney)

Demonstrate and lobby for expanded curricular offerings in SUNY.
(Education Official)

None. Don't and shouldn't have any redress--but be thankful for the excellent opportunities they do have. *(University Counsel)*

9. Do you feel the student action for equal protection is a valid argument? On what grounds can the State justify unequal support of higher education?

No, I don't believe equal protection to be a valid argument. The State can justify it on the grounds that education is a privilege and not a right.
(Law Student)

Yes--given the present no-need system. The State might justify the unequal treatment on the grounds that this is the most effective use of limited State resources, although I find this questionable.
(Law Review Editor)

I don't think equal protection argument is valid. The unequal support of higher education could be justified: 1) necessary allocation of resources; 2) unequal to tax the many to benefit the few; 3) distinctions made on the basis of merit will always be necessary; 4) reluctance of public support for private education; 5) complete freedom of choice an impossibility; 6) this action would open the floodgates--this use of equal protection clause would potentially require the State to provide financial support for everyone who wanted it. *(Law Review Editor)*

No. *(State Counsel)*

No, the student action is not based upon a valid argument. The State is not required to give individuals private property. They are not giving unequal support to education. It is within the State's discretion as to whether a State school should offer certain courses. *(Law Review Editor)*

If one accepts the premise that the State has no duty to provide education beyond the secondary level, and that the State University does, in fact, represent a benefaction of the law, then the equal protection argument must fail. Otherwise, the end result might be the demise of the Public Post-Secondary Educational System, removing the many benefits it has to offer.

If, however, one feels that the State <u>should</u> provide secondary education to all those who wish to take advantage of it, then the argument is valid. The argument fails only insofar as one considers the State University a limited privilege (limited by the physical and economic resources of the State). It might be said that once the State undertakes to provide such education, it should be open to <u>all</u> those who meet minimum, reasonable criteria (such as plaintiff, here), and that it has created an obligation to provide his college education, at the State University if possible, or through subsidies for private education. *(Law Review Editor)*

Yes. The only ground that the State can give is that the traditional dichotomy between public and private education has created a fiscal nit for the State and it will take time to restructure educational budgets to reflect equality. *(Law Review Editor)*

In a case such as is proposed here, I don't believe the action is valid. In this case, to give special treatment to one student by setting up a course, is reverse discrimination in his favor: If unequal support means less to direct aid and all the while supporting a State system, I think the State can justify the system so long as it is operated fairly.

(Attorney)

I really don't because the State should not be placed in a position of being required to supply post-secondary education to its citizens. Providing the choice that they do is sufficient; changing that to an obligation would be disastrous. *(University Administrator)*

No. A rose is not just petals plus stem, etc. Higher education is a multi-faceted process which includes the practical, impractical, expensive and cheap education. No one receives "equal" protection of opportunities.

(University Official)

No. The State in this case would not be engaged in unequal support of higher education. *(Attorney)*

No. State support of higher education has been justified to supplement private education, not to oust private education. *(Attorney)*

No. The rationale for the reply to the second question would require thousands of words. Let me summarize it by suggesting that the State take operational control of all private institutions. *(Education Official)*

It is not "unequal." To furnish many opportunities does not make it "unequal" if State does not furnish all conceivable choices.

(University Counsel)

10. If you see the event as beneficial to society, what lines of approach might legislators/educators/interested publics do to bring about the occurrence of the benefits sooner than you conjectured above? If you see the event as threatening to society, what lines of approach might be brought to bear to forestall the event?

If beneficial then legislators could deal with the problem legislatively before the issue is taken through the courts. A constitutional amendment will probably be necessary declaring education to be a right and not a privilege. If the event is threatening, the legislators could forestall the event through legislative action, but the courts would eventually have to dispose of it.

(Law Student)

I think educators and legislators can make clear to the public that "well-off" students are being subsidized by State funds while poorer students are being

arbitrarily denied access to such benefits (in some cases). This is an inefficient allocation of public monies and is totally unjustified in view of the need for education in today's job market. Public awareness is essential.

(Law Review Editor)

I don't approve of this use of the equal protection clause, however, I favor the State providing more financial support to students who wish post high school education or training. Suggest educators and laymen be educated as to the necessity of providing more funds for education as the chief means of solving many of our current social ills. Few people currently appreciate the interrelationship of education and so many of our social ills.

(Law Review Editor)

The individual units within the State system should make every effort to accommodate offerings to student needs. The answer, I feel, becomes a practical one and it seems to me capable of practical resolution. I would suggest that the students seeking to specialize in particular offerings should have some priority for admission at the campus where his field is available.

((State Counsel)

A general reaffirmation of our objection to socialism.

(Law Review Editor)

The provision of education to resident students by the State is founded in the statutes or constitution of the particular state. Although this duty extends only through secondary schools, it imposes no restrictions on the establishment of State Schools of Higher Learning. Since the State has exercised this authority, it should be used in an equitable manner, so as to provide the greatest possible educational benefits to its students.

Awareness of the significance of education beyond the secondary level could lead to new legislation, perhaps even State subsidies for private school students, or expansion of State University facilities. If pressure is brought upon the legislature to accommodate the fiscal needs of the numerous college

students who are unable to avail themselves of State University privileges, there is a possibility that there would be added momentum which might advance the developments suggested by the case.

Once again, however, the problem is to a large extent economic in nature. The public school system itself faces grave fiscal problems, which might forestall immediate growth at the post-secondary level.

(Law Review Editor)

Public relations campaign--let people know that inequities exist. Sponsor remedial legislation that, while not going all the way, embodies the spirit of educational equality. Educators can convene from both sectors and try to standardize the level of work in a given field--in other words, try to make the only inequity the financial one. *(Law Review Editor)*

The event is beneficial if such action would not result in a preference to some by causing more costly course services. If the total cost is prohibitive because of the tax structure, I would have some apprehension.

(Attorney)

I see the event as threatening society on the overall basis that there must be a line beyond which the State cannot go which would otherwise wipe out private enterprise and eventually private thinking. Government is established to aid private enterprise, not to supplant or destroy it. Tax money should not be so used because by such use, there would be a definite unequality of protection of the laws. A definite citizens campaign should be undertaken by press and other media to influence legislators to insure that such does not take effect; not only at the state level but at the federal level, congressional action should be taken to prevent such action; original suits should be brought immediately in the Supreme Court to test the constitutionality of any laws which would authorize states to do this.

(University Administrator)

The push (process) may be good; I am not sure of the results (education opportunities based on request). Felix domesticus can be undressed in many ways--the push should be for more than one way to get thru any program; to break traditional program format. A lawsuit to give credit and degrees based on student performance rather than courses taken would be most beneficial. *(University Official)*

I do not see the event as beneficial to society.

(Attorney)

Since I believe that the present system of private-public higher education is valuable in a free society, I see the event as threatening to society because I believe its inevitable result will be the end of one or the other of the two sub-systems. Unfortunately, I see no way to forestall it short of drastic limitation of public higher education to professional curricula with space limited to estimates of society's needs for doctors, nurses, engineers, chemists, etc. *(Education Official)*

Charge tuition in State schools - Give more State aid to private schools - Get people--voters, legislators, judges to think straight - and realize that dreams of Utopia must be tempered by practicalities.

(University Counsel)

Appendix II

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Appendix III

FUTURE NEWS EVENTS EXAMINED IN THIS SERIES TO DATE

#1

LaFayette School Board Guilty of Fraud

November 1970

#2

'Obsoleted' Expert Eligible for Social Security Benefits!
Appeal Filed!!

April 1971

#3

*Unequal Student Aid Declared Unconstitutional!!!
Court Decision Will Force Legislative Action

June 1971

#4

State University Found Negligent!!!
Guilty of Exceeding Statutory Authority

July 1971

* Case reported in this volume.

Excerpt

FUTURE NEWS EVENT

#1

LaFayette School Board Guilty of Fraud

The Supreme Court today refused to hear an appeal from the Third Circuit Court in the case of John Brockman vs. The LaFayette Board of Education.

The case concerned the fact that while Brockman, 19, received a diploma from the LaFayette High School, he could only read at a seventh grade level.

His lawyers argued that the school system thus failed in its obligation to provide him with the learning skills they imply he received by awarding the diploma . . .

November 1970

#2

'Obsoleted' Expert Eligible for Social Security Benefits!
Appeal Filed!!

PHILADELPHIA (SURC) --- The United States District Court in Philadelphia ruled today that John Aerosmith, an unemployed aerospace engineer, is eligible to receive advances, etc., from the social security trust fund.

Attorneys for the government have appealed to the United States Circuit Court of Appeals, and have indicated that, if the decision of the lower court is upheld, they will appeal to the Supreme Court . . .

April 1971

Excerpt

FUTURE NEWS EVENT

#3

Unequal Student Aid Declared Unconstitutional!!!
court decision will force legislative action

ALBANY (SURC) --- A New York State Supreme Court judge in Albany ruled today that the State must support equally all students attending any public or private institution of higher learning in the State. In the ruling, unequal support based upon the institution an individual attends, was declared unconstitutional, and the existing system was charged with creating a classification "which constitutes an invidious discrimination clearly denying equal protection under the law" . . .

June 1971

#4

State University Found Negligent!!!
guilty of exceeding statutory authority

ALBANY (SURC) --- A New York State Supreme Court judge in Albany ruled today that the State University of New York had clearly exceeded its statutory authority under the New York Education Law, by offering curricula in excess of public demand at the expense of private institutions, and that their activities bordered on negligence. Judge S. B. Schroeder's ruling, directed to SUNY's Board of Trustees, ordered an immediate end to any curriculum currently offered which placed the State-supported campuses in direct competition with private colleges and universities where no real need exists . . .

July 1971

WORK IN PROGRESS

1. COMPULSORY ATTENDANCE (if education is a consumer business, can you make a consumer buy in a monopoly system?).

2. HIGHER EDUCATION POLICY AND THE NEW VOTING POPULATION 18-21 (implications for the future--essay and notes)

3. THE METROPOLITAN LEARNING AUTHORITY VS. SUBSUMED INTEREST GROUPS

4. CREDENTIALS AND TESTS AS REFLECTORS OF SKILL POTENTIAL

n. ?

   a. Preparation of a histogram of the legal precedents set in the 1960's for a forecasting base for the mid-1970's.

   b. Preparation of a conjecture handbook available to the law schools of the country.

   c. Preparation of "Future" Moot Courts.

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